

COHEN & GREEN

February 2, 2023

Hon. Jennifer H. Rearden, U.S.D.J.
United States District Court for the Southern District of New York
500 Pearl Street
New York, New York 10007

By Electronic Filing.

Re: Brandon, et al., v. City of New York, et al., 22-cv-3137 (JHR)(KHP)

Dear Judge Rearden:

I am co-counsel for Plaintiffs, Lou Brandon and Hillary Wright. The parties write jointly in response to the Court's January 19, 2023 Order.

1. The names of counsel and current contact information:

Plaintiffs: Jessica Massimi, Elena Cohen, Remy Green: Cohen & Green, 929-888-9480, Jessica@femmelaw.com, Elena@femmelaw.com, Remy@femmelaw.com; Gideon Orion Oliver, 646-263-3495, Gideon@gideonlaw.com.

Defendants: Steve Stavridis, Assistant Corporation Counsel, 212-356-2686, sstavrid@law.nyc.gov

2. Claims and Defenses

Claims

On January 18, 2023, Defendants arrested and assaulted Plaintiffs in retaliation for exercising their First Amendment rights while participating in a demonstration near City Hall in support of Black lives. Upon Plaintiffs' arrival at City Hall, NYPD members surrounded the



group of protesters. The NYPD was forcing demonstrators off the sidewalk and into the street to be arrested. As is common during NYPD responses to these demonstrations, the NYPD was issuing orders and simultaneously preventing demonstrators from complying with them.

While Ms. Wright was lawfully present at the protest, at least three Defendant Doe officers used a metal barricade to shove and strike Plaintiff, who was standing on the public sidewalk. Then, without warning, Defendant NYPD Officer David Johnson, Badge #10132 of Strategic Response Group 2, shoved Ms. Wright, causing her to fall and land on her left side, and causing significant and lasting pain to her left shoulder and knee. On November 28, 2022, Defendants disclosed some body-worn camera video (“BWC”) which depicts portions of the subject events, including Ms. Wright discussing the Defendants’ use of excessive force against her earlier that night.

Defenses

As the parties have settled the claims of plaintiff Lou Brandon, the only remaining claims in the complaint are those brought by plaintiff Hillary Wright founded on excessive force. Defendants assert, based on Body Worn Camera (BWC) video, that defendants did not use force against plaintiff Wright, and to the extent any force was used, it was reasonable and justified under the circumstances. Alternatively, individual police officer defendants are entitled to qualified immunity as it was objectively reasonable for them to believe they were justified in employing the force used. Defendants also assert that plaintiff any injuries suffered by plaintiff were *de minimis* and therefore cannot support a claim for excessive force.

3. Jurisdiction and Venue: Federal Question and location of events alleged in the Complaint.



4. Existing deadlines, due dates, and/or cut-off dates:

On September 6, 2022, Judge Koeltl endorsed the parties' proposed scheduling Order requesting six months to complete all discovery. At that time, a mediation date was set for September 16, 2022. However, the parties could not conduct the mediation until December 12, 2022. At the mediation, Plaintiff Lou Brandon's case settled.

Hillary Wright's claims are still pending. The parties have disclosed videos, medical records, and other documents, but require more time to serve and respond to discovery demands and interrogatories, hold depositions, and conduct expert discovery. As such, the parties ask that the Court endorse the following discovery schedule:

- a. Completion of fact discovery, including depositions: June 2, 2023
- b. Amendment of Pleadings: June 2, 2023
- c. Completion of expert discovery: August 4, 2023

5. Pending previously scheduled conferences or arguments: None.

6. Outstanding motions: None.

7. Pending appeals: None.

8. Discovery demands, responses, and depositions.

9. On December 12, 2022, the parties attended a mediation. Only Plaintiff Brandon's case settled.

10. ADR: The parties have attended mediation.

11. Estimated length of trial: 2-3 days from selection to charge.



We all thank the Court for its attention to this matter.

Respectfully submitted,

/s/

Jessica Massimi
COHEN&GREEN P.L.L.C.
Attorneys for Plaintiff
1639 Centre St., Suite 216
Ridgewood, New York 11385

cc:
All relevant parties by ECF.